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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-third session

SUMMARY RECORD OF THE 1294th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 14 August 1998, at 3 p.m.

Chairman: Mr. DIACONU

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Second to ninth periodic reports of Gabon (continued) (CERD/C/315/Add.1, HRI/CORE/1/Add.65) (continued)

1. At the invitation of the Chairman, Mr. Hervo-Akendengue (Gabon) took a place at the Committee table.

2. The CHAIRMAN reminded the Committee that it had begun consideration of the report of Gabon at its 1286th meeting in the absence of the Gabonese delegation. He welcomed Mr. Hervo-Akendengue.

3. Mr. HERVO-AKENDENGUE (Gabon) apologized to the Committee for the delay in the submission of his country's report but emphasized the difficulty experienced by some States in preparing documents of that type because of the lack of qualified human resources.

4. Gabon was situated on the equator, in western central Africa, and bordered Cameroon, Equatorial Guinea and the Congo. To the west, it had a 500-mile Atlantic seaboard. The Gabonese population was 1.2 million and included some 40 ethnic groups. As stated in the report, racial discrimination did not form part of Gabonese culture, and article 1 of the Constitution established the right of every citizen to the development of his personality with respect for the rights of others and public order. Paragraph 13 (3) of the same article stated that any act of racial, ethnic or religious discrimination, and any regionalist propaganda liable to jeopardize the security of the State or the integrity of the Republic were punishable by law.

5. The pygmies, who were the oldest occupants of Gabon and had generally served as guides to the newcomers, the Bantu, were tending to settle in one place and were recognized as Gabonese citizens. The main linguistic groups in Gabon were the Fang group, the Okande group, the Mbédé group, the Bakota group, the Myené group and the Mérié group. Each of those groups was subdivided into several dialectal, patrilineal or matrilineal components.

6. Since Gabon's attainment of independence, the development of a feeling of national unity remained one of the Government's major objectives. Except for certain pygmy groups who were marginalized from society, all the ethnic groups in Gabon belonged in cultural terms to a huge area designated in the nineteenth century as the Bantu area.

7. On the question of refugees on Gabonese territory which had been raised by the Committee, Gabon remained a receiving country for all, but the laws of the land must be obeyed. Thus, any foreigner legally present in Gabon would not be disturbed if he obeyed the law. Today, the country was a victim of its political stability and economic resources, and many nationals of neighbouring countries emigrated secretly to Gabon. The conflicts raging in central Africa were in fact giving rise to migratory movements that were sometimes difficult

to control. In June 1997, Gabon had already had 791 refugees on its territory, mainly from Chad, Mauritania, Equatorial Guinea, Angola, Rwanda, Congo, Liberia, Burundi and Sao Tomé.

8. The status of refugees in Gabon was governed by Act No. 005 of 21 January 1998, whose three implementation decrees were about to be promulgated. The first related to the establishment of the National Commission for Refugees, which would define government policy with regard to asylum seekers, provide legal and administrative protection for refugees, implement the provisions of the international agreements ratified by Gabon and obtain assistance in the integration of refugees. The Commission was presided over by the Minister for Foreign Affairs and Cooperation. The second decree established the Appeals Board, which would be responsible for considering refugee cases on appeal and deal with cases rejected by the Sub-Commission on Eligibility. The Board was composed of a chairman, an independent judge, a representative of the Ministry of Justice, a representative of the Ministry of Foreign Affairs and a member of civil society. The third decree established the Sub-Commission on Eligibility to assist the National Commission for Refugees. The Sub-Commission would be chaired by the Minister of Justice and would include among its members the Minister for Foreign Affairs and the Minister of the Interior; UNHCR would be able to participate in its work on an advisory basis.

9. Concluding with a brief account of the history of Gabon, he emphasized the unswerving determination of the Gabonese people to free themselves from the shackles of slavery, trafficking and colonialism, a determination which had led, on 17 August 1960, to the country's independence. Between 1960 and 1967, Gabon had experienced a period of multi-party government but, from 1967 to 1990, President Omar Bongo had opted for single-party government in order to channel energies more effectively and thereby unify the Gabonese nation. The year 1990 had been marked by the adoption of a new Constitution and new institutions had come into being.

10. Gabon had signed numerous international conventions and was working in close collaboration with the Office of the High Commissioner for Human Rights. A Directorate-General for Human Rights had been set up within the Ministry of Justice, a fact which reflected the political will of the Government to consolidate the achievements of democracy and to promote human rights.

11. Mr. NOBEL (Country Rapporteur) thanked the representative of Gabon for the information he had communicated to the Committee, and in particular for his detailed demographic information. The recent adoption of a law on refugees certainly constituted a positive development for the country. The Committee was well aware of the difficulties involved, for a country like Gabon, in the preparation of a periodic report; however, it drew attention to the existence of advisory and technical assistance services within the Office of the High Commissioner. He hoped that a regular dialogue would be established between the Committee and the State party, and emphasized the need for effective implementation of articles 2 to 7 of the Convention, particularly through appropriate criminal legislation.

12. Mr. HERVO-AKADENGUE (Gabon), having thanked Mr. Nobel for his valuable assistance, emphasized that the Constitution fully reflected the tenor of

articles 2 to 7 of the Convention and demonstrated the desire of the Gabonese authorities to establish sustained dialogue with the Committee.

13. The CHAIRMAN said that the Committee had thus concluded its consideration of the second to ninth periodic reports of Gabon.

14. The delegation of Gabon withdrew.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (agenda item 3) (continued)

Consideration of the situation in the Democratic Republic of the Congo

15. Mr. WOLFRUM (Country Rapporteur) said that the situation in the Democratic Republic of the Congo (formerly Zaire) was inextricably linked to events in Rwanda. The Congo was a country with many communities of very different ethnic, cultural, historical and linguistic backgrounds, and Bantu made up between 60 and 70 per cent of the population.

16. About half of the three million people of North Kivu, in the extreme north-east of the country, spoke the language of Rwanda, Kinyarwanda. That community, known as the Banyarwandas, was made up of equal numbers of Hutus and Tutsis. Banyarwandas also lived in South Kivu. Those who lived near the Mulenge mountains were called Banyamulenges. The term Banyamulenges had, however, come to mean Congolese Tutsis. For many years, the Banyamulenges and Banyarwandas had been treated as Congolese citizens but, in 1991, a law had limited the issue of passports to those who could prove that their ancestors had been living in Zaire prior to 1885. Since 1991, the Banyamulenges and Banyarwandas had been increasingly treated as non-Zairean, more specifically as Rwandan immigrants. Since 1993, civilian militias, encouraged by certain members of the Government and sometimes supported by the Zairean army, had been attacking Hutu and Tutsi communities in North Kivu. The arrival of Rwandan refugees in 1994 had increased tensions between the Kinyarwanda-speaking communities and other ethnic groups in the same region. Hutu militias arriving from Rwanda had stirred up hatred against the Tutsis, and attacks had become directed more against the Tutsis than against the Kinyarwanda-speaking communities. The same situation had developed in South Kivu.

17. In 1996, after the Zairean authorities had ordered the Banyamulenges to leave the country, Banyamulenge villages had been attacked by the Zairean armed forces. The youngest inhabitants had taken refuge in Rwanda where they had undergone military training before returning to Congo to rejoin the ranks of the Alliance of Democratic Forces for the Liberation of Congo-Zaire (ADFL), at that time under the command of Laurent-Désiré Kabila. In addition to fighting the Zairean forces, the ADFL had started attacking Rwandan refugee camps. The refugees - between 600,000 and 1.1 million in number - had fled towards Rwanda; many of them had been killed.

18. On the day that the ADFL forces had taken Kinshasa, Laurent-Désiré Kabila had announced at Lubumbashi that he would assume the powers of President of the Republic. Under the terms of Decree-Law No. 3 of 28 May 1997, all previous constitutional, legal and regulatory provisions had

been repealed. The new Constitution provided that the institutions of the Republic were the President, the Government and the Courts. No provisions were made for a legislative body. The Government was made up of the Council of Ministers, meeting under the President. The army had its own structure. The Constitution made no reference to human rights, but only to the rights and duties of citizens.

19. On 23 October 1997, President Kabila had announced the creation of a constitutional commission, responsible for drawing up a new draft constitution. The draft, submitted to President Kabila in May 1998, apparently included a chapter on human rights, and would establish a presidential system with two houses of representatives (no details of its mode of election or composition were known as yet). Most human rights organizations were very sceptical about the Constitutional Commission, which had been convened in a very undemocratic way. The future would tell whether the new Constitution was any improvement on the old one.

20. To date, no democratic institutions existed and the Court Martial (Cour d'ordre militaire) constituted the entire legal system. The new regime was hostile towards United Nations institutions, and had impeded for several months the work of the Investigative Mission mandated by the Commission on Human Rights. The Mission had left the country in April 1998 and its report had not yet been made public. The Government had been opposed to what it considered interference in the internal affairs of the State and had flatly denied that any massacre had taken place. The Office of the High Commissioner for Human Rights in Kinshasa appeared to be still functioning, and had organized human rights training seminars for senior government officials. As a consequence, in May 1998, the Government had established a working group on human rights under the aegis of the Ministry of Justice. Human rights groups still continued their activities, although the largest of them, AZADHO, had been dissolved.

21. According to Mr. Garretón, the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, the situation could not but deteriorate. The new regime had been guilty of political assassinations, carried out the systematic repression of dissidents and, in general, took no account of human rights.

22. According to the most recent information from the Office of the High Commissioner for Refugees, there had been 1.1 million refugees from Rwanda and Burundi in camps in the Democratic Republic of the Congo. Some 600,000 of them had since apparently returned home, 350,000 of them were still in the Democratic Republic of the Congo; and the whereabouts of the remaining 100,000 to 200,000 were unknown. The Committee had already expressed its concern at the situation the previous year, and two documents from the Commission on Human Rights (E/CN.4/1998/64 and E/CN.4/1998/65) confirmed the previous conclusions and increased the degree of concern.

23. In the light of the worsening human rights situation and given the growing complexity of the political and military situation, the Committee had very limited means at its disposal, but it should use them to best effect. The situation unquestionably came within the mandate of the Committee, since the conflict was evidently an ethnic one. However, the balance of power and

the alliances appeared to change from day to day. He proposed therefore appealing to all parties to cease fire. The Committee could also categorically condemn any form of ethnic conflict, urge the authorities, whoever they might be, to request the assistance of the United Nations and, lastly, call for the opening of an inquiry into the massacres, an inquiry which should not be subject to any prior conditions by any party.

24. Mr. de GOUTTES thanked Mr. Wolfrum for his detailed analysis of a complex situation which, because of the inter-ethnic conflicts involved, should remain on the Committee's agenda. He was entirely in favour of the draft conclusions within the framework of the urgent action procedures, but would like to add three points to them. First of all, it would perhaps be appropriate to deplore the fact that the Special Rapporteur, Mr. Garretón, ha not been given free access to the territory. Secondly, a reference might be made to the statement by the President of the Security Council, dated 13 July 1998, which spoke of massacres and human rights violations and recommended that a new impartial inquiry be carried out. According to Amnesty International, that statement was not strong enough, since it requested the Government of the Congo to carry out the inquiry itself, rather than referrin to the need for an independent external inquiry. Lastly, it would perhaps be advisable to refer to the fact that the Government of the Congo had forced hundreds of refugees from Rwanda and Burundi to return to their countries, at the risk of their lives.

25. Mr. SHAHI said that the situation in the Congo could henceforth only be described as civil war. Faced with such a situation, the Committee must do everything it could, on the basis of the proposal by Mr. Wolfrum, whom he thanked for his exhaustive work. He wondered, incidentally, why the matter had not been directly referred to the Security Council.

26. Mr. RECHETOV said that he, too, thought that the conflict was an inter-ethnic one, although it was not a case of the direct persecution of one ethnic group by another. He deplored the situation and, more generally, the proliferation of similar situations around the world. In that connection he drew the Committee's attention to the situation in Afghanistan, which also had ethnic components and which the Committee should perhaps consider at its next session. As for the situation in the Congo, it must obviously be kept o the Committee's agenda.

27. Mr. SHERIFIS said he thought that the most effective approach would be to ask Mr. Wolfrum to prepare a draft recommendation stressing the human dimension of the problem, without forgetting the question of displaced persons. The draft, which might be considered the following week, would be based on Mr. Wolfrum's proposals.

28. Mr. NOBEL said he endorsed the proposals by Mr. Wolfrum and Mr. de Gouttes, but hoped that the general tone of the recommendation would b firmer. In the context of the condemnation of ethnic conflicts, he was in favour of adding a reference to violations of human rights and international humanitarian law. Concerning the independent inquiry, he would like to highlight the importance of establishing responsibility and assessing the

humanitarian needs of the survivors. Lastly, it might be a good idea to encourage the parties to request assistance from the United Nations and other humanitarian relief organizations.

29. The CHAIRMAN said he proposed to request Mr. Wolfrum to prepare a draft decision to be submitted to the Committee for consideration the following week.

30. It was so decided.

Draft decision on Kosovo (CERD/C/53/Misc.30/Rev.2, conference room document in English only)

31. Mr. WOLFRUM recalled that a working group consisting of Mr. Shahi, Mr. Rechetov, Mr. Garvalov and himself had prepared a draft decision, containing several alternative versions, in square brackets, for the Committee's consideration.

32. According to the most recent information, a team of Kosovo parliamentarians had just been set up and was about to go to Belgrade to negotiate the future status of Kosovo.

33. The CHAIRMAN opened the discussion on the draft decision on Kosovo.

34. Mr. SHAHI said he wished to dissociate himself from the form of the draft decision, which, he thought, was, generally speaking, far too moderate. Since the previous session, an unprecedented military offensive had been launched in Kosovo. There were some 300,000 refugees, and the situation was a humanitarian disaster. That being the case, he was in favour of a much firmer tone. That comment concerned above all paragraph 1 of the draft decision, in which the word "worsening" did not convey with the necessary force the full reality of the situation.

35. Analysing the draft decision paragraph by paragraph, he said that the second preambular paragraph did not pose any problem. The same was true for the third preambular paragraph, except that General Recommendation XXI (1996), to which it referred, was not compatible in every respect with Security Council resolution 1160 of 31 March 1998, the subject of the fourth preambular paragraph. He would prefer not to use the expression "Taking into consideration" [of Security Council resolution 1160 of 31 March 1998]. Whereas General Recommendation XXI (1996) upheld the concept of territorial integrity and rejected that of secession, provided that the principles of international law were respected, the Security Council resolution rejected secession far more categorically. He read out the whole of paragraph 16 of Security Council resolution 1160 in order to show that the draft decision took account solely of paragraph (a). If the Committee should decide to use the word "Noting" rather than "Taking into consideration", there would no longer be any contradiction between the third and fourth preambular paragraphs.

36. As for the phrases "highest level of autonomy" and "substantially greater degree of autonomy", he recommended the former, the formula that had been adopted by the Committee at its March 1998 session. The success of the

Serbian military intervention and the weakness of the position of the Kosovars must not influence the Committee. The words "as a means for everyone to enjoy their human rights and in particular to eliminate all forms of racial discrimination" had nothing to do with the level of autonomy and, consequently, should not appear in that paragraph.

37. The condition regarding respect for territorial integrity in the second operative paragraph went beyond what was stated in General Recommendation XXI and should therefore be deleted.

38. The words "expresses its concerns" in the fifth operative paragraph did not seem to be commensurate with the seriousness of the humanitarian disaster in Kosovo. As for the alternatives of "disproportionate" and "excessive and indiscriminate", he pointed out that, although at its March session the Committee had opted for the former version, recent events, and in particular the great number of displaced persons, currently argued in favour of the second. Lastly, in view of the uncertainty about the actual number of refugees and displaced persons, it would be preferable not to set the figure at 200,000 but to speak of several hundred thousand persons.

39. Regarding the sixth operative paragraph, he preferred the version at the end of the paragraph beginning with the words "through dialogue with the Kosovo-Albanian leadership a political solution".

40. The CHAIRMAN, speaking in his personal capacity, stressed that the conflict had seen many acts in violation of human rights perpetrated against the civilian population. In his view, those were acts of terrorism, and the Committee should make reference to that fact in its decision. He proposed the addition, at the end of the fifth operative paragraph, of the words "as well as any acts of terrorism against civilians in Kosovo and Metohija based on ethnic origin".

41. Mr. van BOVEN said, first of all, that the words "Federal Republic of Yugoslavia" must be used rather than "Yugoslavia". He also proposed specifying that the Committee's concluding observations referred to in the second preambular paragraph were those of 19 March 1998. Lastly, the decision should, he thought, mention the question of the scorched-earth policy practised in certain regions of Kosovo.

42. As for a reference to acts of terrorism committed against civilians, he recalled that the question had been discussed at length during the March session. He fully agreed that many acts of violence had been committed against civilians, but the term "terrorism" could be defined in many ways, and in his view, the events to which the Chairman wanted to refer were not acts of terrorism. He therefore preferred the more neutral words "acts of violence".

43. Mr. YUTZIS said that, in the absence of a Spanish version, he was unable to give a definitive opinion on such a delicate matter. He wondered, however, whether the Committee was entitled to tell the Kosovo Albanians that they must settle their problems by peaceful means. He was not sure that it was always possible to respond to violence by peaceful means. Perhaps the Committee should take account of the fact that the Kosovo Albanians had taken up arms because the Serbian leaders had decided to deprive them of all autonomy.

44. Mr. NOBEL said he shared Mr. van Boven's views about the word "terrorism", which was often used for propaganda purposes. He did not agree, however, with Mr. Shahi about the link between the degree of autonomy which Kosovo and Metohija should enjoy and the elimination of all forms of racial discrimination. He recalled that in paragraph 20 of the concluding observations that it had adopted after considering the report of Yugoslavia at its March 1998 session (CERD/C/304/Add.50), the Committee had expressed the opinion that a solution for Kosovo and Metohija included a status of the highest level of autonomy for that part of the State party as a means for everyone to enjoy their human rights and in particular to eliminate all forms of racial discrimination. That paragraph took account of the historical context of the region and the discrimination of which the Albanian population had been the victim in the province of Kosovo and Metohija for many years. Consequently, the elimination of racial discrimination must not be dissociated from the degree of autonomy which the region would have.

45. Mr. de GOUTTES said that the Committee should employ the words used in paragraphs 14 and 20 of the concluding observations it had adopted in March 1998, namely, "disproportionate use of force" (fifth operative paragraph) and "the highest level of autonomy" (first operative paragraph). He agreed with Mr. van Boven that it was difficult to define the term "terrorism" and that it was better to speak of "acts of violence". He agreed that the decision should make mention of the scorched-earth policy.

46. Mr. RECHETOV, referring to Mr. Nobel's comments on the demographic composition of the Kosovo population, said that the 150,000 or so Muslims living in the province of Kosovo and Metohija regarded the region as an inalienable part of Serbia.

47. Concerning the first operative paragraph, he thought like many of his colleagues that the Committee should confine itself to its decision of March 1998, one which, he was pleased to note, was based on respect for the territorial integrity of the Federal Republic of Yugoslavia.

48. Regarding the reference to acts of terrorism, he pointed out that the Security Council had not hesitated to use that expression in resolution 1160. The Committee might follow suit and specify in its decision what it meant by the expression.

49. Mr. BANTON said that the second version of the sixth operative paragraph, which appeared in brackets in the text, seemed more appropriate than the first, it being understood that the Committee, given the rapid development of the situation in Kosovo and Metohija, would not use the procedure set out in article 9 (1) of the Convention, but rather the one applied in exceptional situations by the Human Rights Committee. The Chairman might, between sessions, request the Government of the Federal Republic of Yugoslavia to submit to the Committee, at the beginning of January 1999, additional information for its next session.

50. The CHAIRMAN, speaking as a member of the Committee, said that the Yugoslav Government should also be asked to submit the information requested

by a set date in the hope that, in the meantime, negotiations would have been started between the parties in order to reach a peaceful settlement to the conflict in Kosovo and Metohija.

51. Unlike Mr. Nobel, he thought that the recommendation that the Yugoslav Government should give the highest level of autonomy to Kosovo and Metohija ought to be linked to the assertion of the need to protect the human rights of the population and to combat racial discrimination in the territory. Otherwise, the Committee's request would be of an intrinsically political nature; that would not be in conformity with its mandate and would also create an unfortunate precedent.

52. Mr. SHERIFIS, reverting to the first operative paragraph, said that the position adopted by the Committee in March 1998 could be applied mutatis mutandis to the evolving situation in Kosovo by means of an adaptation that would consist of combining the recommendation that Kosovo and Metohija be granted the highest level of autonomy (CERD/C/304/Add.50, para. 20) with the last part of the sentence in square brackets at the end of the first paragraph of the draft decision: "as a means for everyone to enjoy their human rights and in particular to eliminate all forms of racial discrimination". That would make it quite clear that the purpose of the recommendation was to combat racial discrimination in Kosovo and Metohija. In addition, the phrase "include a status" should be replaced by a clearer wording.

53. In the second operative paragraph, he proposed that the words "based on respect for the territorial integrity of Yugoslavia" be replaced by "based on respect for the territorial integrity of the Federal Republic of Yugoslavia". In the third operative paragraph, he suggested inserting the words "and properties" after "their homes" and, in the fourth operative paragraph, the words "its call" after "Reiterates". In the fifth operative paragraph, he proposed inserting the word "deep" before "concerns".

54. In view of the rapidly deteriorating situation in Kosovo, the figure of 200,000 refugees in square brackets in the fifth operative paragraph was likely to change quickly, and he therefore suggested employing a more general wording, such as "a great number", in order to avoid giving a specific figure, which might soon prove too low. He supported Mr. Banton's proposal that the Yugoslav Government be asked to submit to the Committee additional information for its March 1999 session by a specific date, such as 15 January 1999.

55. Mr. YUTZIS said that the situation in Kosovo and Metohija had changed considerably since the intervention of Albanian elements, which had only complicated it still further. He noted that, in its concluding observations on the fourteenth periodic report of Yugoslavia (CERD/C/304/Add.50), the Committee had specified conditions whose implementation it had regarded as necessary to arrive at a peaceful settlement in Kosovo and Metohija. It would be unfair and inappropriate, in his view, for the Committee to call upon the parties to enter into negotiations without any preconditions on a lasting solution. Moreover, it would be inconsistent for the Committee to invoke at the same time Security Council resolution 1160 (1998) condemning the use of excessive force by Serbian police forces against civilians as well as all acts of terrorism by the Kosovo Liberation Army or any other group or individual. The Committee should also refrain from formulating recommendations on

questions which did not fall strictly within its human rights mandate. The draft decision should be considerably simplified by deleting all references likely to prevent the members of the Committee from reaching a consensus.

56. Ms. ZOU Dexi said that the Committee's recommendation that Kosovo and Metohija be granted the highest level of autonomy should be retained, because it would be consistent with the concluding observations adopted during the consideration of the fourteenth periodic report of Yugoslavia. Concerning terrorism, the Committee should respect the spirit, if not the terms, of Security Council resolution 1160 (1998) on the Federal Republic of Yugoslavia, in which the Security Council had repeatedly condemned acts of terrorism in Kosovo. Mr. Diaconu's proposal that the Committee should condemn the excessive use of force by the State party as well as acts of terrorism committed against civilians for ethnic reasons seemed to be the best way to proceed.

57. Mr. WOLFRUM said that, by making a few changes, a text could be produced that was acceptable to all the members of the Committee; he proposed inserting the following sentence at the beginning of the fifth paragraph:

> "Expresses its deep concerns at persisting grave violations in Kosovo and Metohija of basic human rights, especially acts of violence against civilians in Kosovo based on ethnic origin, committed by whatever groups or individuals".

58. Mr. RECHETOV endorsed the suggestion by Mr. Yutzis that the text be simplified. He was firmly opposed to Mr. Diaconu's proposal, which was unacceptable because it would place all the responsibility on a single party and thus make it impossible for the members of the Committee to reach a consensus and adopt the draft decision under consideration.

59. The CHAIRMAN asked Mr. Wolfrum to recast the draft decision, taking duly into account the views expressed by the members of the Committee so as to submit to them an acceptable compromise text.

60. It was so decided.

The meeting rose at 6 p.m.